

Honorable Judge Benjamin Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY
SPENCER, and KATHRYN E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY JAMES
M. PETERS, DETECTIVE SHARON KRAUSE,
SERGEANT MICHAEL DAVIDSON, CLARK
COUNTY PROSECUTOR'S OFFICE, CLARK
COUNTY SHERIFF'S OFFICE, THE COUNTY
OF CLARK and JOHN DOES ONE THROUGH
TEN,

Defendants.

No. C11-5424BHS

**DECLARATION OF RUTH
BOUTIN KUNCCEL, Ph.D, IN
SUPPORT OF PLAINTIFF'S
RESPONSE TO DEFENDANTS'
MOTION FOR FED.R.CIV.P.35
EXAMINATION**

**NOTICE DATE:
Friday, November 30, 2012**

Pursuant to 28 U.S.C. § 1746, Ruth Boutin Kuncel, Ph.D., declares under penalty of perjury under the laws of the State of Washington and the United States of America that the following is true and accurate:

1. My name is Ruth Boutin Kuncel, Ph.D. I am a licensed clinical psychologist in the State of Illinois. Prior to receiving a Certificate of Postdoctoral Respecialization in Clinical Psychology in 1992, I received my B.A., M.A. and Ph.D. in psychology from the University of

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FED.R.CIV.P.35 (C11-5424BHS) — 1

Kathleen T. Zellner & Associates, P.C.
LAW OFFICES
1901 Butterfield Road
Suite 650
Downers Grove, Illinois 60515
630.555.1212 main • 630.555.1111 fax

1 Chicago. I have conducted research and have extensive experience in the area of psychological
2 testing and assessment. A true and correct copy of my curriculum vitae is attached as Exhibit
3 A.

4 2. Based on my training, education and experience, I am qualified to testify to the
5 matters stated herein, and do so within a reasonable degree of psychological certainty.

6 3. I was asked by Kathleen T. Zellner & Associates, P.C., to offer an opinion as to the
7 value of additional psychological testing proposed by the defense, including the administration
8 of an MMPI. I am of the opinion that it would be unproductive and likely counterproductive to
9 conduct additional psychological testing on Dr. Spencer for the reasons stated herein.

10 4. Dr. Spencer is himself a clinical psychologist who is familiar with psychological
11 tests, the assumptions underlying such tests, the structure of the subtest, the construction of the
12 test items, how tests can be faked, and more generally test reliability and validity.

13 5. Research shows that when an individual has prior knowledge of the tests he is taking,
14 the test results may be unreliable and invalid, akin to reviewing a class examination before it is
15 administered.

16 6. To my knowledge there are no standardized norms that are specifically designed and
17 directed to test a clinical psychologist.

18 7. Furthermore, Dr. Spencer has already been tested many times. Test/re-test results
19 may be problematic because the test taker has gained familiarity with the test. Norms for
20 properly interpreting test/re-test results of individuals who have been tested in excess of two
21 times are limited and, depending on the test, non-existent.

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1 8. In all, as described above, re-testing a clinical psychologist offers multiple
2 psychometric problems.

3 9. Additionally, earlier test results on Dr. Spencer are available. Dr. Spencer has
4 already been tested multiple times. These tests were generally administered before Dr. Spencer
5 became a clinical psychologist, and have fewer problems associated with testing and re-testing.

6 10. Given the state of psychological testing, there are too many confounds and
7 psychometric problems to make additional psychological testing psychometrically meaningful,
8 and in fact may lead to misleading results, as outlined above.

9 11. In summary, given the problems of Dr. Spencer's current circumstance as a clinical
10 psychologist who has been tested and re-tested, and the psychometric problems associated with
11 reliability and validity of the test results and interpretations, in my opinion further testing as
12 outlined above would not shed additional light on Dr. Spencer's claim of emotional and
13 psychological damages.
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1 SIGNED this 26th day of November, 2012 in Hinsdale, Illinois.

2 Respectfully submitted,

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4 Ruth Boutin Kuncel Ph.D.

5 Ruth Boutin Kuncel, Ph.D.

6 Subscribed and Sworn to Before me
7 this 26th day of November, 2012

8 Scott T. Panek
9 Notary Public



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DECLARATION OF SERVICE

I hereby certify that on November 26, 2012, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record, and that a copy was mailed via U.S. mail to the attorneys of record from 1901 Butterfield Road, Downers Grove, Illinois, as follows:

Patricia Campbell Fetterly Daniel J. Judge Robert M. McKenna Assistant Attorney General Torts Division PO Box 40126 Olympia, WA 98504-0116 Email: patriciafl@atg.wa.gov Attorneys for Defendant James M. Peters	Bernard F. Veljacic Deputy Prosecuting Attorney Clark County Prosecuting Attorney Civil Division 604 W. Evergreen Blvd. P.O. Box 5000 Vancouver, WA 98666-5000 Email: Bernard.Veljacic@clark.wa.gov Attorney for Defendants Clark County Prosecutor's Office, Clark County Sheriff's Office, and Clark County
Guy Bogdanoich Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. P.O. Box 11880 Olympia, WA 98508-1880 Email: gbogdanovich@lldkb.com Attorney for Defendant Sharon Krause	Jeffrey A. O. Freimund Freimund Jackson Tardif & Benedict Garratt, PLLC 711 Capitol Way South, Suite 602 Olympia, WA 98502 Email: jeffF@fjtlaw.com Attorneys for Defendant Michael Davidson

/s/ Kathleen T. Zellner

Kathleen T. Zellner & Associates, P.C.
 Admitted *pro hac vice*
 1901 Butterfield Road
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 Attorney for Plaintiffs

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Exhibit A

Ruth Boutin Kuncel, Ph.D.

Licensed Clinical Psychologist

911 North Elm Street, Suite 320
Hinsdale, IL 60521

Telephone: (630) 325-4310
Facsimile: (630) 617-5751

EDUCATION

- 1992 **Certificate of Postdoctoral Respecialization in Clinical Psychology, Illinois School of Professional Psychology** (APA approved clinical program)
- 1970 **Ph.D., Psychology, University of Chicago**
Concentration in personality assessment, personality, and psychopathology.
(Department had APA approved clinical program.)
- 1970 **M.A., Psychology, University of Chicago**
- 1967 **B.A., Psychology, University of Chicago**

Licensed Clinical Psychologist - State of Illinois, #071-002327

National Register of Health Service Providers in Psychology - #42826

DuPage County Evaluation Program (Domestic Relations Division, Court of the 18th Judicial Circuit). Member 1998 - ; Member of Oversight Committee for the Mediation/Evaluation Program 1998-; Member of the DuPage County Conciliation Program 1993-1998; Member of the Advisory Board for the Conciliation Program 1996 -1998.

Registered Sex Evaluator, Certified by the Attorney General's Office, State of Illinois

The American College of Forensic Examiners - Member. Diplomate of the American Board of Psychological Specialties

CLINICAL EXPERIENCE

1995- **Independent Practice**, Hinsdale, IL

Clinical Psychologist

Perform psychological, neuropsychological, and psychoeducational testing, including evaluations in the areas of criminal and civil liability, child custody, guardianship, disability, and personnel selection. Have conducted evaluations in many capital murder cases, participated in insanity defenses, conducted risk assessments in criminal sexual assault cases, and testified as an expert on false confessions and on child development. Conduct psychotherapy with adults, adolescents, children, couples, and families. Consult and lecture in the community.

1992 - Associates in PsychCare - Wheaton. Wheaton/North Riverside, IL
1995

Clinical Psychologist

Conducted psychotherapy with adults, adolescents, children, couples, and families. Performed psychological, neuropsychological, and psychoeducational testing, including evaluations in the areas of patient treatment, child custody, criminal and civil liability, guardianship, foster care, disability, and personnel selection. Obtained two years of supervision in neuropsychology. Served as an expert witness. Provided supervision for new staff. Consulted and lectured in the community.

1991- West Side Veterans Administration Medical Center. Psychology
1992 Service. Chicago, IL

Psychology Intern. (APA approved clinical program)

Major Rotations: Inpatient/Outpatient Alcohol Program, Inpatient Psychiatry Program, Medical Psychology (Consult-Liaison Program, Biofeedback Clinic)

Minor Rotations: Sexual Dysfunction Clinic, Psychiatric Admitting Clinic, Post Traumatic Stress Disorder Clinic, Outside Rotation in Private Practice conducting individual therapy with children, adolescents, and adults)

Year-long responsibilities conducting outpatient psychotherapy, psychological and neuropsychological testing.

1990- University of Chicago Hospitals. Department of Psychiatry, Chicago, IL
1991

Neuropsychology Extern. Neuropsychology Service.

Conducted diagnostic interviews, neuropsychological and psychological testing with inpatient/outpatient adults.

Psychology Extern. Center for Cognitive Therapy.

Conducted psychotherapy with children, adolescents and families. Counseled parents. Conducted psychological/ neuropsychological testing with outpatient children. Evaluated children for school placement.

1989- Illinois State Psychiatric Institute. Chicago, IL.

1990

Psychology Extern

Conducted individual psychotherapy with adolescents for Tri-Agency Residential Services, an inpatient milieu unit. Supervised family visits. Conducted informal small group activity therapy. Took aggression management training course.

HOSPITAL AFFILIATIONS

1993- **Good Samaritan Hospital** - Allied Health Professional

1994- **MacNeal Hospital** - Allied Health Professional

2000

1994- **University of Chicago Hospitals** - Lecturer, Department of Psychiatry

1996

RESEARCH EXPERIENCE - PERSONALITY TESTS

University of Chicago. Department of Psychology and Department of Behavioral Sciences (Committee on Methodology of Behavioral Research). Chicago, IL.

1970- Research Associate

1975 Conducted research on personality measurement. Research included development of a new method for measuring personality traits, effect of subject test taking behavior on data quality, and implications of such behavior for item design. Aided faculty and students in formulation of research questions, methodology, data analysis, interpretation of results, and writing of articles on research in personality measurement and outcome of psychotherapy. Helped write grant applications. Participated in departmental administration including dissertation committee, faculty selection, and graduate student training. Reviewed peer articles and books for journals and publication.

1966- Research Assistant

1968 Conducted research on personality measurement. Undergraduate research was presented at the American Psychological Association.

TEACHING EXPERIENCE - PSYCHOLOGY

1974- Roosevelt University, Psychology Department. Chicago, IL
1975

Lecturer (graduate and upper division)

Taught courses in Theory of Tests and Measurements and in Personality Theory.

1968- University of Chicago. Department of Psychology and Department of
1970 Behavioral Sciences (Committee on Methodology of Behavioral Research).
Chicago, IL

Teaching Assistant

Assisted in courses in Personality Measurement and in Psychological Measurement.

TEST DESIGN EXPERIENCE - APTITUDE AND ACHIEVEMENT TESTS

1977- Merit Employment Assessment Services. Flossmoor, IL
1984

Senior Research Psychologist

Designed entry and promotional level personnel selection tests for customers such as the Pennsylvania State Police and the Metropolitan Sanitary District of Greater Chicago. Conducted job analyses and wrote test manuals. Test content included police procedures, firefighting, mechanical aptitude, map reading, common sense reasoning, clerical aptitude, lab assistant skills, administrative skills, building construction codes. Gained some familiarity with legal issues surrounding the use of psychological tests.

1975- International Personnel Management Association. Test Services.
1977 Chicago, IL

Senior Research Associate

Supervised three technical assistants in construction of personnel selection tests (police and fire). Validated tests. Wrote instruction manuals. Served as liaison with Selection Consulting Center (Sacramento) on joint test development.

1977 Spiegel, Inc. Chicago, IL

Consultant

Devised promotional level bill collector's exam (subcontracted from Mansfield Human Resources, Des Plaines, IL).

OTHER RESEARCH AND BUSINESS EXPERIENCE

1985- United Way/Crusade of Mercy. Department of Research and Planning.
1989 Chicago, IL

Research Analyst.

Conducted in-house research. Wrote papers on juvenile delinquency, crime, mental health. Developed crime database. Evaluated Volunteer Action center and the Alternatives for Youth Program. Conducted study to guide revision of agency program evaluation system. Created a new personnel evaluation system. Dealt regularly with government and member agencies.

1984- Leo Burnett, U.S.A. Research Department, Chicago, IL
1985

Assistant Research Analyst

Conducted advertising research for the RCA and Pillsbury accounts. Had responsibility for some agency-wide copytest development and evaluation projects. Developed and evaluated a study on the effect of outside service and inhouse testing on copy decision-making.

1983 Analytics. Arlington Heights. IL

Consultant

Evaluated new product data for an advertising firm.

FELLOWSHIPS, SCHOLARSHIPS, AWARDS, HONORS, AND LISTINGS

U.S. Public Health Service Predoctoral Fellow (National Institute of Mental Health),
1968-70.

University Fellow, University of Chicago, 1967-1968.

University Scholarship, University of Chicago, 1963-67.

Selected by faculty to represent the Social Sciences Division on the Student Committee
to Assist the President of the University, University of Chicago, 1968-1969.

Dean's List, University of Chicago, 1964-67.

Woodrow Wilson Letter of Commendation, 1967.

Who's Who in the Midwest, 1992-

Who's Who of American Women, 1995-

PROFESSIONAL MEMBERSHIP

American Psychological Association
National Register of Health Service Providers in Psychology
The American College of Forensic Examiners
American Society for Reproductive Medicine
RESOLVE: The National Infertility Association

BIBLIOGRAPHY

Original peer reviewed articles

Fiske, D. W. & Kuncel, R. B. (1972). How does it feel to take a personality test? Proceedings, 80th Annual Convention, APA, 25-26.

Kuncel, R. B. (1973). Response processes and relative location of subject and item. Educational and Psychological Measurement, 33(3), 545-563.

Kuncel, R. B. & Fiske, D. W. (1974). Stability of response process and response. Educational and Psychological Measurement, 34(4), 743-755.

Kuncel, R. B. (1977). The subject-item interaction in itemmetric research. Educational and Psychological Measurement, 37(3), 665-678.

Kuncel, R. B. (1977). Ordering items by endorsement value and its effect upon test validity. Educational and Psychological Measurement, 37(4), 897-905.

Craig, R. J., Kuncel, R., & Olson, R. E. (1994). Ability of drug abusers to avoid detection of substance abuse on the MCMI-II. Journal of Social Behavior and Personality, 9, 95-106.

Non-peer reviewed original articles

Tyler, T. A. & Kuncel, R. B. (1979). Manual for the MEAS Firefighter's Examination. Flossmoor, IL: MEAS.

Author of numerous personnel selection tests held under copyright by the International Personnel Management Association (1975) and Merit Employment Assessment Services (1977-1984).

Research conducted 1985-1989 was for inhouse business purposes only. Some research findings appeared in United Way/Crusade of Mercy brochures, press releases, and published presentations.

Book Chapters

Kuncel, R. B. (1981). Reducing diversity in subject interpretation of items. In D. W. Fiske (Ed.) Problems with Language Precision (No. 9, pp. 67-91) in sourcebook series New Directions for Methodology of Social and Behavioral Science. San Francisco: Jossey-Bass.

Kuncel, R. B. & Kuncel, N. R. (1995). Response process models; Toward an integration of cognitive processing models, psychometric models, latent trait theory, and self-schema. In P. E. Shrout & S. T. Fiske (Eds.) Personality Research, Methods, and Theory: A Festschrift for Donald S. Fiske (pp. 183-199). Hillsdale, NJ: Erlbaum.

Abstracts

Kuncel, R. B. (1970). Response processes and relative location of subject and item. Unpublished doctoral dissertation, University of Chicago. (from Dissertation Abstracts, 1971, X, Abstract No. 151659)

Kuncel, R. B. (1973). Response processes and relative location of subject and item. Educational and Psychological Measurement, 33(3), 545-563. (from Mental Health Abstracts, 1974, Abstract No. 11582)

Kuncel, R. B. & Fiske, D. W. (1974). Stability of response process and response. Educational and Psychological Measurement, 34(4), 743-755. (from Mental Health Abstracts, 1975, Abstract No. 22101)

Kuncel, R. B. & Fiske, D. W. (1974). Stability of response process and response. Educational and Psychological Measurement, 34(4), 743-755. (from SciSearch, Abstract No. V0577)

Kuncel, R. B. (1977). The subject-item interaction in itemmetric research. Educational and Psychological Measurement, 37(3), 665-678. (from Mental Health Abstracts, 1978, Abstract No. 18383)

Kuncel, R. B. (1977). The subject-item interaction in itemmetric research. Educational and Psychological Measurement, 37(3), 665-678. (from PsychINFO, Abstract No. 60-04409)

Kuncel, R. B. (1977). The subject-item interaction in itemmetric research. Educational and Psychological Measurement, 37(3), 665-678. (from SciSearch, Abstract No. DX479)

Kuncel, R. B. (1977). Ordering items by endorsement value and its effect upon test validity. Educational and Psychological Measurement, 37(4), 897-905. (from Mental Health Abstracts, 1978, Abstract No. 19512)

Kuncel, R. B. (1977). Ordering items by endorsement value and its effect upon test validity. Educational and Psychological Measurement, 37(4), 897-905. (from PsychINFO, Abstract No. 60-10768)

Kuncel, R. B. (1977). Ordering items by endorsement value and its effect upon test validity. Educational and Psychological Measurement, 37(4), 897-905. (from SciSearch, Abstract No. EE550)

Craig, R. J., Kuncel, R., & Olson, R. E. (1994). Ability of drug abusers to avoid detection of substance abuse on the MCMI-II. Journal of Social Behavior and Personality, 9, 95-106. (from PsychINFO, Abstract No. 81-31971)

Reviews

Aldrich, David. (1981). Stability of response, reliability, and accuracy of measurement. Educational and Psychological Measurement, 41(2), 253-262.

Invited lectures

Kuncel, R. B. Objective Measures of Depression in Patients with Neurological and Other Organic Deficits. Invited Lecture in the University of Chicago Hospitals, Department of Psychiatry, Clinical Neurosciences Series, March, 1991.

Kuncel, R. B. Neuropsychological Deficits: Keeping a Lookout for Symptoms of Dementing Disorders. Invited Lecture for Community Integrated Living Arrangements, June, 1994.

Kuncel, R. B. Symposium Member, representing MacNeal Hospital. Community Forum to Prevent Child Abuse, Berwyn Project Success, April, 1996.

Kuncel, R. B. Rearing Children in the 90s. Invited Lecture, St. Cyprian School, November, 1996.

Kuncel, R. B. Private Practice and Pitfalls. Invited Lecture, University of Chicago Hospitals, Department of Psychiatry, February, 1997.

Kuncel, R.B. Stress Management. Representing MacNeal Hospital, MacNeal Corporate Wellness Program. Invited Lecture, Viskase Corporation, October, 1997.

Kuncel, R. B. Pitfalls in Private Practice/Dealing with Managed Care. Invited Lecture, University of Chicago Hospitals, Department of Psychiatry, April, 1998.

Kuncel, R. B. Fifth Amendment & Confidentiality Concerns. Invited Lecture, DuPage County Evaluation Program, September, 1998.

Kuncel, R.B. Communication Dynamics: Detecting Lying and Other Issues Related to Deception or Accuracy of Report. Invited Lecture, Circuit Court of DuPage County, Child Representative Training, November, 1999.

Kuncel, R.B. Potential Roles for Psychologists in Capital Cases: Suggestions on How to Make Use of Our Expertise. Invited Lecture, The Chicago Bar Association, Continuing Legal Education Seminar, Capital Case Training Program, November, 2001.

Kuncel, R.B. The MMPI-2 in Forensic Practice. Invited Lecture, DuPage County Bar Association, April, 2002.

May 20, 2011